



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 30, 2023

IN THE MATTER OF:

Appeal Board No. 626492

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective December 17, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by THE BROOKLYN HOSPITAL prior to December 17, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. At the hearing, the Judge modified the initial determination to include an alternate issue disqualifying the claimant from receiving benefits on the basis that the claimant voluntarily separated from employment without good cause. Due process was accorded. By decision filed October 20, 2022 (), the Administrative Law Judge sustained the initial determination of voluntary separation from employment without good cause.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. Prior to the hearing, the employer had requested an adjournment of the hearing because its witness was unavailable. The Board has determined that the employer should have another opportunity to appear and provide testimony and evidence regarding the circumstances under which the claimant's employment ended. The employer should provide testimony and evidence regarding its vaccine policy and the purpose of any policy. Prior to the remand hearing, the employer should review the transcript of the prior hearing, so that it will be

prepared to ask questions of the claimant.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of voluntary separation from employment without good cause and misconduct, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER